# Mohd Zaid bin Ibrahim v P Kamalanathan a/l P Panchanathan & Ors

HIGH COURT (SHAH ALAM) — ELECTION PETITION NO PP-1 OF 2010
AZAHAR MOHAMED J
5 AUGUST 2010

*Election — Election court — Judge — Jurisdiction — Whether election judge has jurisdiction to strike out election petition without trial — Whether election judge has jurisdiction to determine returned candidate after dealing with petition on preliminary objection — Whether defective petition ought to be allowed to go on trial — Election Offences Act 1954 s 36*

*Election — Petition — Allegation of corrupt practice — Corrupt practice consisting of bribery — Bribery, elements of — Whether close and direct nexus between bribery act and receiver to do or refrain from doing certain act necessary — Failure to show how general bribery affected outcome of elections — Whether bribery established — Whether identity of receiver or persons said to be induced or influenced by bribery material fact to be pleaded in election petition — Election Offences Act 1954 ss 10(a), (c), (e) & 32(a) — Election Petition Rules 1954 rr 4(1)(b), 4(4)(3) & 5*

*Election — Petition — Defective petition — Failure to plead material facts — Reasons for strict requirement to plead material facts — Whether failure to plead material facts could be cured by evidence led at trial — Whether such defect in petition matter of substance rather than form — Election Offences Act 1954 s 32(a) & (c) — Election Petition Rules 1954 r 4(1)(b) & 4(4)(3)*

*Election — Petition — Service — Modes of — Whether petitioner entitled to use one or more modes of service to serve petition on respondent — Election Petition Rules 1954 r 15(1)*

The P94 Hulu Selangor parliamentary by-election was won by the first respondent who beat the petitioner by a majority of 1,725 votes. The petitioner filed the instant petition to, inter alia, declare the election null and void. The petition was based on the grounds of corrupt practice pursuant to s 32(c) of the Election Offences Act 1954 ('the Act') and general bribery pursuant to s 32(a) of the Act. Three corrupt practices were said to have been committed by the first respondent, respectively under s 10(a), (c) and (e) of the Act. After the

petition was fixed for hearing, the first respondent applied to strike out the petition on various grounds. The second and third respondents also raised preliminary objections against the petition. The petitioner however raised a preliminary issue contending that the election judge was not vested with power to strike out or otherwise dispose of an election petition by way of a striking out application or a preliminary objection.

**Held**, striking out the petition with costs:

(1) The preliminary issue raised by the petitioner was without merit. Election petitions are public interest cases. It is very much in the public interest that such cases should be speedily determined. The election judge does indeed have the jurisdiction to strike out a defective election petition without the need for a full hearing. Further, the election court has jurisdiction to make a determination on whether the candidate whose election is complained of was duly elected, as provided by s 36 of the Act, after dealing with the election petition by way of preliminary objection (see paras 15–16); *Zulkarnaini bin Mohamed Noor v Syed Omar bin Mohamed & Anor* [1979] 2 MLJ 143 referred; *Gan Joon Zin v Fong Kui Lun & Ors* followed; *Wan Sagar bin Wan Embong v Harun bin Taib & Ors* [2008] 4 MLJ 473; [2008] 5 CLJ 14 followed; *Ahmad Jamaluddin bin Abd Majid v Rafidah bt Aziz & Ors* [2009] 2 MLJ 646 followed.

(2) The Election Petition Rules 1954 ('EPR') is not entirely clear whether service of the petition and the r 15(1) notice must be effected through one mode of service only. The petitioner was thus entitled to use one or more modes provided under the EPR to effect service on the first respondent. In the instant case, the petitioner had fully complied with r 15(1) through personal service of the petition and the notice of presentation of the election petition, by posting the same on the High Court's notice board, and the advertising of the r 15(1)(c) notice in the national newspapers (see paras 21–22); *Mohd Ridza Zain lwn Hanafi Mamat & 2 Ors* [2006] 1 LNS 194 referred.

(3) The Stamp Act 1949 does not contain any provision for the stamping of the petitioner's notice of appointment of advocate. Even if it was not stamped as required under r 9 of the EPR, such failure would only go towards the admissibility of such notice and would not form a ground sufficient for the High Court to strike out the petition (see para 28); *Chiew Chiu Sing v Dato' Seri Tiong King Sing* [2005] 1 MLJ 759 referred; *Ruhimin Adzim @ Ruhimin bin Ajim v Tan Sri Bernard Dompok & Ors* [2005] 1 MLJ 345 referred.

(4) All material facts must be pleaded in an election petition, as required by r 4(1)(b) and r 4(4)(3) of the EPR. The reasons for such a mandatory requirement are as follows. Firstly, just as the jurisdiction of

A the election judge to hear an election petition is a creature of statute which strictly binds him to act within the confines of the election laws, similarly a petitioner in an election petition must strictly adhere to the requirements of election laws. Secondly, the 'audi alteram partem' rule requires that a party be given notice of the case against it in order to B enable it to defend itself. Thirdly, allegations of corrupt practice are serious allegations in the nature of quasi-criminal charges that must be proved beyond reasonable doubt — therefore strict compliance with election laws will enable the respondent to know the nature of the allegations and to prepare his case (see paras 33–34); *Mahari bin Endut* C *v Dato' Hj Mat Razali bin Kassim & Ors* [2009] 5 MLJ 153 followed; *Kho Whai Phiaw v Chong Chieng Jen* [2009] 4 MLJ 776 referred; *Wan Daud bin Wan Jusoh v Mohamed bin Haji Ali & Anor* [1988] 2 MLJ 384 referred.

D (5) In order to sustain an election petition under s 32(a) and (c) of the Act the material facts to be pleaded, as required by r 4 of the EPR, would be the elements that constitute the offence of bribery in question (see para 36); *Mohd Nazri bin Hj Din v Dato' Seri Raja Ahmad Zainuddin bin Raja Hj Omar & Ors* [2009] 3 MLJ 589 followed.

E (6) To constitute bribery under s 10(a), (c) and (e) under the Act, a close and direct nexus must be proved between the bribery act and the person to whom it was addressed, to do or refrain from doing a certain thing that he otherwise would have done or not done. In the instant petition, there was a glaring omission to mention the names of the F persons said to have been so induced or influenced by the alleged act of the first respondent or his agent. The petitioner's use of the words 'parliamentary electors' implied that the petitioner himself did not know at the time of the filing of the election petition, the identity of the persons. Such words were vague and devoid of material facts and G would render the petition defective. The identity of the persons to whom the bribery is made or addressed is a not a matter of evidence which need not be pleaded. Such identity was a material fact that had to be pleaded under r 4(1)(b) and r 4(4) of the EPR, which omission could not be saved by r 5 of the EPR. No amount of evidence could H cure a defect in the pleadings (see paras 38 & 41); *Re Pengkalan Kota Bye-Election Teoh Teik Huat v Lim Kean Siew & Anor* [1981] 1 MLJ 265; *Mohd Nazri bin Hj Din v Dato' Seri Raja Ahmad Zainuddin bin Raja Hj Omar & Ors* [2009] 3 MLJ 589 referred; *KK Ramachandran Master v MV Sreyamakumar & Ors* [2010] STPL (Web) 444 SC not I followed; *Mohd Nazri bin Hj Din v Dato' Seri Raja Ahmad Zainuddin bin Raja Hj Omar & Ors* [2009] 3 MLJ 589 followed; *Azhar Hussain v Rajiv Gandhi* AIR 1986 SC 1253 referred.

(7) The fundamental flaw in the petition was a matter of substance and not merely form. The petition in its current form lacked the most vital and material fact to furnish a cause of action. The petitioner had failed to plead the essential element that constituted the offences of bribery within the meaning of s 10(a), (c) and (e) of the Act. Consequently, the petitioner had not complied with the requirements of r 4(1)(b) and r 4(4)(3) of the Act. The petition was thus defective and invalid (see para 42).

(8) The petitioner had relied entirely on the ground pleaded under s 32(c) to sustain his allegation under s 32(a) of the Act. However, since the petitioner had failed to plead the essential elements of bribery under s 10 (a), (b) and (c) in order to justify the ground of corrupt practice under s 32(c) thereby resulting in non-compliance with r 4(1)(b) and r 4(4)(3), it followed that the ground under s 32(a) was also wholly untenable (see para 49).

(9) The petitioner had also failed to state the facts and particulars in the petition to show how the alleged general bribery had so extensively prevailed that it reasonably affected the result of the by-election. The petitioner had only made general statements and failed to comply with the provisions of s 32(a) of the Act read with r 4(1)(b) and 4(4)(3) of the EPR for the purpose of enabling the petition to go to trial (see para 50); *Gan Joon Zin v Fong Kui Lun & Ors* [2004] 4 CLJ 729 referred.

(10) A fundamentally defective election petition should not go to trial. It was not in accordance with the concept of procedural fairness for the first respondent to answer defective charges. It was a basic principle of natural justice that the first respondent should be given a complete notice of the case against him to adequately defend himself and to have a fair opportunity of answering the same (see para 51).

**[Bahasa Malaysia summary**

Pilihan raya kecil parlimen Hulu Selangor P94 dimenangi oleh responden pertama yang mengalahkan pempetisyen dengan majoriti 1,725 undi. Pempetisyen memfailkan petisyen ini untuk, antara lain, mengisytiharkan pilihan raya tersebut batal dan tidak sah. Petisyen tersebut berdasarkan atas alasan-alasan amalan rasuah berikutan s 32(c) Akta Kesalahan Pilihanraya 1954 ('Akta tersebut') dan rasuah am berikutan s 32(a) Akta tersebut. Tiga amalan rasuah didakwa telah dilakukan oleh responden pertama, masing-masing di bawah s 10(a), (c) dan (e) Akta tersebut. Selepas petisyen tersebut ditetapkan untuk perbicaraan, responden pertama memohon untuk membatalkan petisyen tersebut atas berbagai alasan. Responden-responden pertama dan ketiga juga membangkitkan bantahan awalan terhadap petisyen tersebut. Pempetisyen walau bagaimanapun membangkitkan isu awalan dengan menghujah bahawa hakim pilihan raya tidak diberikan kuasa untuk

membatalkan atau sebaliknya memutuskan petisyen pilihan raya dengan cara permohonan untuk pembatalan atau bantahan awalan.

**Diputuskan**, membatalkan petisyen dengan kos:

(1) Bantahan awalan yang dibangkitkan oleh pempetisyen adalah tanpa merit. Petisyen pilihan raya adalah kes yang mempunyai kepentingan awam. Adalah dalam kepentingan awam bahawa kes-kes sedemikian diputuskan segera. Hakim pilihan raya sememangnya mempunyai bidang kuasa untuk membatalkan petisyen pilihan raya yang cacat tanpa perlu perbicaraan penuh. Selanjutnya, mahkamah pilihan raya mempunyai bidang kuasa untuk memutuskan sama ada calon yang pilihan rayanya diadukan dipilih, seperti yang diperuntukkan oleh s 36 Akta tersebut, selepas memutuskan petisyen pilihan raya secara bantahan awalan (lihat perenggan 15–16); *Zulkarnaini bin Mohamed Noor v Syed Omar bin Mohamed & Anor* [1979] 2 MLJ 143 dirujuk; *Gan Joon Zin v Fong Kui Lun & Anor* diikut; *Wan Sagar bin Wan Embong v Harun bin Taib & Ors* [2008] 4 MLJ 473 diikut; *Ahmad Jamaluddin bin Abd Majid v Rafidah Aziz & Ors* [2009] 2 MLJ 646 diikut.

(2) Peraturan-Peraturan Petisyen Pilihan Raya 1954 ('Peraturan') tidak jelas secara keseluruhannya sama ada penyerahan petisyen dan notis peraturan 15(1) mesti diberikan melalui satu cara penyerahan sahaja. Pempetisyen oleh itu berhak untuk menggunakan satu atau lebih cara yang diperuntukkan di bawah Peraturan untuk membuat penyerahan ke atas responden pertama. Di dalam kes ini, pempetisyen secara keseluruhan telah mematuhi peraturan 15(1) melalui penyerahan kediri petisyen dan notis pengemukaan petisyen pilihan raya, dengan meletakkannya di papan notis Mahkamah Tinggi, dan mengiklankan notis peraturan 15(1)(c) di dalam surat khabar nasional (lihat perenggan 21–22); *Mohd Ridza Zain lwn Hanafi Mamat & 2 Ors* [2006] 1 LNS 194 dirujuk.

(3) Akta Setem 1949 tidak mengandungi apa-apa peruntukan untuk penseteman notis pempetisyen bagi pelantikan peguam. Walaupun ia tidak disetem seperti yang diperlukan di bawah peraturan 9 Peraturan, kegagalan tersebut hanya akan menjejaskan kebolehterimaan notis tersebut dan tidak akan membentuk alasan yang mencukupi untuk Mahkamah Tinggi membatalkan petisyen tersebut (lihat perenggan 28); *Chiew Chiu Sing v Dato' Seri Tiong King Sing* [2005] 1 MLJ 759 dirujuk; *Ruhimin Adzim @ Ruhimin bin Ajim v Tan Sri Bernard Dompok & Ors* [2005] 1 MLJ 345 dirujuk.

(4) Kesemua fakta material mesti diplidkan di dalam petisyen pilihan raya, seperti yang diperlukan oleh peraturan 4(1)(b) dan 4(4)(3) Peraturan. Alasan untuk keperluan mandatori tersebut adalah seperti berikut.

Pertama, sama seperti bidang kuasa hakim pilihan raya untuk mendengar petisyen pilihan raya adalah diwujudkan oleh statut yang mengikatnya secara ketat untuk bertindak di dalam rangkuman undang-undang pilihan raya, begitu juga seseorang pempetisyen di dalam petisyen pilihan raya mesti mematuhi secara ketat keperluan undang-undang pilihan raya. Kedua, peraturan '*audi alteram partem*' memerlukan bahawa sesuatu pihak diberikan notis mengenai kes tersebut untuk membolehkannya membela diri. Ketiga, dakwaan amalan rasuah adalah dakwaan serius yang bersifat tuduhan kuazi-jenayah yang mesti dibuktikan melampaui keraguan yang munasabah — oleh itu pematuhan ketat dengan undang-undang pilihan raya akan membolehkan responden mengetahui sifat dakwaan tersebut dan menyediakan kesnya (lihat perenggan 33–34); *Mahari bin Endut v Dato' Hj Mat Razali bin Kassim & Ors* [2009] 5 MLJ 153 diikut; *Kho Whai Phiaw v Chong Chieng Jen* [2009] 4 MLJ 776 dirujuk; *Wan Daud bin Wan Jusoh v Mohamed bin Haji Ali & Anor* [1988] 2 MLJ 384 dirujuk.

(5) Untuk mengekalkan petisyen pilihan raya di bawah s 32(a) dan (c) Akta tersebut fakta material yang perlu diplidkan, seperti yang diperlukan di bawah peraturan 4 Peraturan, adalah unsur-unsur yang membentuk kesalahan rasuah yang dipersoalkan (lihat perenggan 36); *Mohd Nazri bin Hj Din v Dato' Seri Raja Ahmad Zainuddin bin Raja Hj Omar & Ors* [2009] 3 MLJ 589 diikut.

(6) Untuk membentuk rasuah di bawah s 10(a), (c) dan (e) Akta tersebut, hubungan yang rapat dan secara langsung mesti dibuktikan di antara tindakan rasuah dan orang yang terhadapnya ia diarahkan, untuk membuat atau menahan diri daripada membuat perkara yang jika tidak dia tidak akan membuatnya atau tidak buat. Di dalam petisyen ini, terdapat peninggalan yang jelas untuk menyatakan nama-nama orang yang didakwa telah menyebabkan atau mempengaruhi tindakan responden pertama atau ejennya yang didakwa. Penggunaan perkataan 'parliamentary electors' oleh pempetisyen membawa maksud bahawa pempetisyen sendiri tidak mengetahui pada masa pemfailan petisyen pilihan raya, identiti orang tersebut. Perkataan-perkataan tersebut amat kabur dan tidak mempunyai fakta material dan boleh menjadikan petisyen tersebut cacat. Identiti orang yang kepadanya rasuah diberikan atau dialamatkan bukan suatu keterangan yang perlu diplidkan. Identiti tersebut adalah fakta material yang mesti diplidkan di bawah peraturan 4(1)(b) dan 4(4) Peraturan, yang peninggalannya tidak boleh dikembalikan oleh peraturan 5 Peraturan. Tidak ada keterangan yang boleh memperbaiki kecacatan di dalam pliding tersebut (lihat perenggan 38 & 41); *Re Pengkalan Kota Bye-Election Teoh Teik Huat v Lim Kean Siew & Anor* [1981] 1 MLJ 265 dirujuk; *KK Ramachandran Master v MV Sreyamakumar & Ors* [2010]

STPL (Web) 444 SC tidak diikut; *Mohd Nazri bin Hj Din v Dato' Seri Raja Ahmad Zainuddin bin Raja Hj Omar & Ors* [2009] 3 MLJ 589 diikut; *Azhar Hussain v Rajiv Gandhi* AIR 1986 SC 1253 dirujuk.

(7) Kecacatan asas di dalam petisyen adalah perkara penting dan bukan formaliti semata-mata. Petisyen tersebut dalam bentuk terkininya kekurangan fakta yang paling penting dan material untuk membentuk kausa tindakan. Pempetisyen gagal untuk memplid elemen penting yang membentuk kesalahan rasuah dalam rangkuman maksud s 10(a), (c) dan (e) Akta tersebut. Dengan itu, pempetisyen tidak mematuhi keperluan peraturan 4(1)(b) dan 4(4)(3) Peraturan. Petisyen tersebut oleh itu adalah cacat dan tidak sah (lihat perenggan 42).

(8) Pempetisyen telah menyandar secara keseluruhan atas alasan yang diplidkan di bawah s 32(c) untuk mengekalkan dakwaannya di bawah s 32(a) Akta tersebut. Walau bagaimanapun, oleh sebab pempetisyen telah gagal untuk memplid unsur-unsur penting rasuah di bawah s 10(a), (b) dan (c) untuk mewajarkan alasan amalan rasuah di bawah s 32(c) oleh itu membawa kepada ketidakpatuhan terhadap peraturan 4(1)(b) dan 4(4)(3), dan bahawa alasan di bawah s 32(a) juga adalah tidak dapat dipertahankan (lihat perenggan 49).

(9) Pempetisyen juga gagal menyatakan fakta-fakta dan butir-butir di dalam petisyen untuk menunjukkan bagaimana dakwaan rasuah umum telah diamalkan secara begitu meluas sehingga menjejaskan secara munasabah keputusan pilihan raya kecil tersebut. Pempetisyen hanya membuat kenyataan am dan gagal mematuhi peruntukan s 32(a) Akta tersebut dibaca bersama peraturan 4(1)(b) dan 4(4)(3) Peraturan bagi tujuan untuk membolehkan petisyen dibicarakan (lihat perenggan 50); *Gan Joon Zin v Fong Kui Lun & Ors* [2004] 4 CLJ 729 dirujuk.

(10) Petisyen pilihan raya yang cacat secara asas tidak harus dibicarakan. Ia tidak selari dengan konsep keadilan prosedur bagi responden pertama menjawab tuduhan yang cacat. Ia adalah prinsip asas keadilan semula jadi bahawa responden pertama diberikan notis lengkap mengenai kes terhadapnya untuk membela diri dengan secukupnya dan mempunyai peluang yang adil untuk menjawab kes tersebut (lihat perenggan 51).]

**Notes**

For a case on judge, see 6 *Mallal's Digest* (4th Ed, 2009 Reissue) para 2065.
For cases on allegation of corrupt practice, see 6 *Mallal's Digest* (4th Ed, 2009 Reissue) paras 2095–2108.
For cases on defective petition, see 6 *Mallal's Digest* (4th Ed, 2009 Reissue) paras 2140–2144.
For cases on service, see 6 *Mallal's Digest* (4th Ed, 2009 Reissue) paras 2179–2191.

**Cases referred to**

*Ahmad Jamaluddin bin Abd Majid v Rafidah bt Aziz & Ors* [2009] 2 MLJ 646, FC (folld)

*Azhar Hussain v Rajiv Gandhi* AIR 1986 SC 1253 (refd)

*Bhikaji Keshao Joshi & Anor v Brijlal Nandlal Biyani & Ors* AIR 1955 SC 610 (refd)

*Chiew Chiu Sing v Dato' Seri Tiong King Sing* [2005] 1 MLJ 759; [2004] 8 CLJ 82, HC (refd)

*Dr Shafie bin Abu Bakar v Pegawai Pengurus Pilihan Raya N 26 Bangi — Mohd Zakri bin Hj Hussin & Ors and other petitions (No 2)* [2005] 2 MLJ 149, HC; [2005] 5 CLJ 349, HC (refd)

*Gan Joon Zin v Fong Kui Lun & Ors* [2004] 4 CLJ 729, FC (folld)

*KK Ramachandran Master v MV Sreyamakumar & Ors* [2010] STPL (Web) 444 SC (not followed)

*Keshav Prasad v AD Mani* [1961] DEC 133 (MPHC), HC (refd)

*Kho Whai Phiaw v Chong Chieng Jen* [2009] 4 MLJ 776; [2009] 3 CLJ 201, FC (refd)

*Mahari bin Endut v Dato' Hj Mat Razali bin Kassim & Ors* [2009] 5 MLJ 153 (folld)

*Mohd Nazri bin Hj Din v Dato' Seri Raja Ahmad Zainuddin bin Raja Hj Omar & Ors* [2009] 3 MLJ 589; [2009] 3 CLJ 221, FC (folld)

*Mohd Ridza Zain lwn Hanafi Mamat & 2 Ors* [2006] 1 LNS 194, HC (refd)

*Pengkalan Kota Bye-Election Teoh Teik Huat, Re v Lim Kean Siew & Anor* [1981] 1 MLJ 265; [1981] 1 LNS 1, HC (refd)

*Ruhimin Adzim @ Ruhimin bin Ajim v Tan Sri Bernard Dompok & Ors* [2005] 1 MLJ 345; [2004] 1 LNS 461, HC (refd)

*Wan Daud bin Wan Jusoh v Mohamed bin Haji Ali & Anor* [1988] 2 MLJ 384, HC (refd)

*Wan Sagar bin Wan Embong v Harun bin Taib* [2008] 6 MLJ 473; [2009] 1 CLJ 457, FC (refd)

*Wan Sagar bin Wan Embong v Harun bin Taib & Ors* [2008] 4 MLJ 473; [2008] 5 CLJ 14, FC (folld)

*Zulkarnaini bin Mohamed Noor v Syed Omar bin Mohamed & Anor* [1979] 2 MLJ 143, HC (refd)

**Legislation referred to**

Courts of Judicature Act 1964 Part II

Election Offences Act 1954 ss 10(a), (c), (e), 32, 32(a), (c), 34(b), 35A, 36, 36(1), (2), 37, 42

Election Petition Rules 1954 rr 4, 4(1), (1)(b), (4), (4)(3), 5, 9, 15, 15(1), (1)(a), (c)

Federal Constitution arts 113, 118, 121

Stamp Act 1949

*Malik Imtiaz (Azhar Azizan Harun, Ang Hean Leng and Leong Sher How with him) (Thomas Philip) for the petitioner.*
*Firoz Hussein (Mohd Hafarizam, Cheng Mai, Syed Faizal, Abu Bakar Sidiq and Nadhrah with him) (Hafarizam Wan & Aisha Mubarak) for the first respondent.*
*Suzana Atan (Azizan, Mohd Azhar Mohd Yusoff and Noor Hisham Ismail with him) (Senior Federal Counsel, Attorney General's Chambers) for the second and third respondents.*

**Azahar Mohamed J:**

THE P94 BY-ELECTION

**[1]** This election petition arises as a result of a by-election which took place about three months ago. Mohd Zaid bin Ibrahim ('the petitioner') was the candidate at the by-election for the parliamentary constituency of P94 Hulu Selangor for Parti Keadilan Rakyat. In the said by-election held on the 25 April 2010, the petitioner and one P Kamalanathan a/l P Panchanathan ('the first respondent'), representing the Barisan Nasional, were the only candidates. A total number of 64,500 parliamentary electors made up the electorate of the parliamentary constituency of P94 Hulu Selangor at the material time for the said by-election. The said parliamentary constituency covered the area of Hulu Selangor which included the districts of Rasa, Sungai Buaya and Kalumpang. The first respondent was subsequently declared the winner with a majority of 1,725 votes. The returning officer, Tuan Hj Nor Hisham bin Ahmad Dahlan ('the second respondent'), returned the first respondent as being duly elected as Member of Parliament of P94 Hulu Selangor.

THE ELECTION PETITION

**[2]** Subsequently, on 24 May 2010 the petitioner filed the petition herein pursuant to s 34(b) of the Election Offences Act 1954 ('the Act'), praying the following:

(a) that it might be determined that P Kamalanathan a/l P Panchanathan, the respondent herein, was not duly elected or ought not to have been returned as the Member of Parliament for P94 Hulu Selangor parliamentary constituency and this election was null and void;

(b) for determination and directions under s 36 of the Act;

(c) costs; and

(d) any such further order or other reliefs as the court deems just.

**[3]** Besides the first and second respondents, the Election Commission Malaysia, the constitutional body which conducted the by-election pursuant to art 113 of the Federal Constitution ('FC') was also named as the third respondent.

**[4]** Section 32 of the Act specifies five grounds on or under which an election may be declared void by an election petition. It is worth noticing at the outset that the petitioner filed the petition on the following two grounds:

(a) corrupt practice by the first respondent and/or the agent pursuant to s 32(c) of the Act; and

(b) general bribery by the first respondent and/or the agent pursuant to s 32(a) of the Act.

**[5]** As it can be understood from the election petition, three main corrupt practices were alleged to have been committed by the first respondent. The first falling under s 10(a) of the Act. The second falling under s 10(c) and the third falling under s 10(e).

**[6]** Continuing with the sequence of events, counsel for the respective parties appeared before me on 16 June 2010 for pre-trial case management. This court then fixed 19 July 2010 until 29 July 2010 for the trial of the petition.

## THE FIRST RESPONDENT'S STRIKING OUT MOTION

**[7]** The first respondent then took out a motion dated 28 June 2010 (encl 26) seeking to strike out the petitioner's petition. On 9 July 2010, the second and third respondents gave notice of their preliminary objection.

**[8]** The first respondent's motion to strike out the petition is premised on the following grounds:

(a) the petitioner's failure to comply with r 15(1) of the Election Petition Rules 1954 ('EPR');

(b) the petitioner's failure to comply with r 9 of the EPR;

(c) the petitioner's failure to comply with r 4(1)(b) and r 4(4) of the EPR;

(d) the matters pleaded in the election petition not falling within the definition of s 32(a) and/or (c) of the Act; and/or

(e) the election petition not disclosing any reasonable cause of action.

THE SECOND AND THIRD RESPONDENTS' PRELIMINARY OBJECTION

**[9]** The second and third respondents' preliminary objection is based on the following:

(a) the election petition does not disclose any reasonable cause of action against the second and third respondents; and

(b) the petitioner has failed to comply with the mandatory requirements under r 4(1)(b) of the EPR because the petition does not contain sufficient facts and/or the facts or particulars pleaded do not amount to any of the offences provided under s 32(a) and/or (c) the Act as follows:

(i) The petitioner has failed to identify the purported persons to whom the promises were alleged to have been made and/or has failed to state whether they were registered voters of the Parliamentary Constituency of P94 Hulu Selangor.

(ii) The petitioner has failed to state the facts and grounds relied upon to sustain the prayers sought for that are how the alleged general bribery has so extensively prevailed that it is reasonably supposed to have affected the result of the election as provided under s 32(a) of the Act.

(iii) The issues pleaded by the petitioners do not in law constitute bribery as defined under s 10(a) and/or (e) of the Act and therefore do not amount to 'corrupt practice' as provided for under s 32(c) of the Act.

**[10]** In view of the striking out motion and the preliminary objection, I will have to deal with and resolve these interlocutory applications in the first instance.

THE PETITIONER'S PRELIMINARY ISSUES

**[11]** Before dealing with the specific issues which arise for decision in relation to the interlocutory applications, there was one preliminary issue raised by the petitioner. It is this. Whether an election judge is vested with the power to strike out or otherwise dispose of an election petition by way of a striking out application or a preliminary objection?

**[12]** Mr Azhar Azizan Harun, learned counsel for the petitioner argued that an election judge is not vested with such a power. His argument can be summarised as follows. Under art 118 of the FC, an election may only be called in question by an election petition presented to the High Court having

jurisdiction where the election was held. This is the constitutional provision which creates the jurisdiction of the High Court to adjudicate an election petition. This is in contrast with the High Court's general jurisdiction and powers. In this respect, art 121 of the FC provides that such jurisdiction and powers may be conferred by federal law. Thus, the general jurisdiction and powers of the High Court derives mainly from the provisions of Part II of the Courts of Judicature Act 1964. The Act postulates a disposal of election petition only by way of a trial and nothing else and upon the conclusion of a trial; the election judge has specific duties to perform as follows: s 35A — trial of petition shall be completed in six months; s 36(1) — determinations which shall be made by the election judge at the conclusion of trial; s 36(2) — duty to certify his determination; and s 37 — duty to make report in writing whether there was any corrupt or illegal practice upon conclusion of a trial.

**[13]** These duties are specific and are imposed upon the election judge mandatorily by the Act. An election judge is, therefore, constraint by the duties and functions which the Act imposes upon him. He is constraint by the powers which are expressly vested in him by the Act and nothing else. The saving provision in s 42 of the Act only concerns the procedure and practice which are to be adopted. With express requirement under the Act for an election judge to make determination, certification and report upon the conclusion of the trial of an election petition, there is no question of an election judge having the power to strike out an election petition in the manner in which the respondents are asking in their respective applications. The procedures and practice of the High Court cannot be adopted when there is no power to exercise in the first place. That in a summary is the submission of counsel for the petitioner.

**[14]** Now, I had on 20 July 2010 disallowed the preliminary issue raised by the petitioner and I ruled that an Election Court is vested with the power to strike out or otherwise dispose of an election petition by way of a striking out application or a preliminary objection. My reasons are as follows.

**[15]** Election petitions are public interest cases and as such it is very much in the interest of the public that the matter should be speedily determined (see *Zulkarnaini bin Mohamed Noor v Syed Omar bin Mohamed & Anor* [1979] 2 MLJ 143).

**[16]** The point as to whether an election judge has the jurisdiction to strike out an election petition that is defective without the need to go through the process of a full hearing has been settled by the Federal Courts in the cases of *Gan Joon Zin v Fong Kui Lun & Ors* [2004] 4 CLJ 729, *Wan Sagar bin Wan Embong v Harun bin Taib & Ors* [2008] 4 MLJ 473; [2008] 5 CLJ 14 and *Ahmad Jamaluddin bin Abd Majid v Rafidah bt Aziz & Ors* [2009] 2 MLJ 646.

**[17]** Furthermore, the Election Court has jurisdiction to make a determination on whether the candidate whose election is complained of was duly elected, as provided by s 36 of the Act, after dealing with the election petition by way of preliminary objection (see *Wan Sagar bin Wan Embong v Harun bin Taib & Ors*).

**[18]** Therefore, in my view the preliminary issue raised by the petitioner to the effect that an election judge does not have jurisdiction to strike out an election petition is without merit.

**[19]** This brings me to the first respondent's motion and the second and third respondents' preliminary objection to strike out the election petition.

*Non-compliance of r 15(1)(a) and (c) of the EPR*

**[20]** The issue that comes first for determination is the contention of the first respondent that the petitioner has purportedly served pursuant to r 15(1)(a) of the EPR by personally serving on the first respondent on 3 June 2010 a purported 'Notis Penyampaian Petisyen Pilihanraya [Menurut Kaedah 15 Kaedah-Kaedah Petisyen Pilihanraya 1954]' dated 24 May 2010 and a sealed copy of the election petition (see exh K1). The contention is that the said notice under r 15(1)(a) is defective in that it states at the last paragraph therein that the said notice is also posted on the notice board of the High Court by way of service on the first respondent. This contention is not free from difficulties.

**[21]** It must be noted that the EPR is not entirely clear as to whether the service must be done by one mode of service only. The petitioner is therefore entitled to use one or more modes provided under the EPR to effect service on the first respondent (see *Mohd Ridza Zain lwn Hanafi Mamat & 2 Ors* [2006] 1 LNS 194).

**[22]** Having carefully read the affidavits of service of Jaili bin Ahmad affirmed on 3 June 2010 and on 9 June 2010, there can be no doubt whatsoever that the petition and the r 15(1)(a) notice were served on the respondents pursuant to r 15(1)(a) of the EPR on the first respondent on 3 June 2010. The receipt of the papers was duly acknowledged by the first respondent. In addition, the petitioner also effected service of the petition and the r 15(1)(c) notice on the first respondent by posting the papers on the notice board of the High Court of Shah Alam on 27 May 2010; advertising the r 15(1)(c) notice in the national newspaper, *Utusan Malaysia* on 7 June 2010; and advertising the r 15(1)(c) notice in the national newspaper, *The Star* on 8 June 2010. To that extent, I would therefore agree with the submission of learned counsel for the petitioner that two different types of notices were issued as both the methods under r 15(1)(a) and (c) were adopted, hence, two different types of notices.

**[23]** Now, it is true that the notice in question (exh K1) states therein '*Notis ini juga telah ditampalkan di papan notis, Mahkamah Tinggi Shah Alam, sebagai Penyampaian kepada anda*'. In my view, there is no reason for any confusion or ambiguity as the notice uses the word 'JUGA' in the last paragraph of the notice indicating that the service was also done pursuant to r 15(1)(c) of the EPR. I am unable to accept the submission of Mr Firoz Hussein, learned counsel for the first respondent to the effect that by so inserting the paragraph in the notice (exh K1) it would suggest that the petitioner is opting for service by way of r 15(1)(c). I reject the argument that the personal service of the petition on the first respondent is only for his information and does not operate as service under r 15(1)(a). I also do not see, as argued by learned counsel for the petitioner, how the notice (exh K1), makes it ambiguous on the mode of intended service on the first respondent where it has caused confusion to the first respondent on the mode of service the petitioner seeks to rely upon. I do not see how has the first respondent has been prejudiced.

**[24]** On the facts as disclosed by the affidavits of service, there can be no doubt that the service of the relevant papers was effected on the first respondent by way of:

(a) personal service pursuant to r 15(1)(a) of the EPR; and

(b) by posting the petition on the notice board of the High Court of Shah Alam and the national newspapers pursuant to r 15(1)(c) of the EPR.

**[25]** As to the first respondent's argument that the phrase *free of charge* was omitted from the paragraph in the notice of presentation of petition, I find that there is no merit in this argument. I find it hard to think that this omission has prejudiced the first respondent.

**[26]** On this issue, I conclude by saying that the service of the petition and the notices of presentation of the election petition has fully complied with r 15(1) of the EPR.

*Non-compliance of r 9 of the EPR*

**[27]** I turn next to the contention by the first respondent to the effect that there has been non-compliance of r 9 of the EPR. The first respondent's complaint on this point is that the notice of appointment of advocate is not stamped as required under r 9.

**[28]** In the first place, the Stamp Act 1949 does not contain any provision for the stamping of documents of this nature. In any event, even if the said notice is not stamped as argued by the first respondent, it merely goes to the issue of admissibility of the notice and does not form a ground sufficient for this court

to strike out the petition (see *Chiew Chiu Sing v Dato' Seri Tiong King Sing* [2005] 1 MLJ 759; [2004] 8 CLJ 82 and *Ruhimin Adzim @ Ruhimin bin Ajim v Tan Sri Bernard Dompok & Ors* [2005] 1 MLJ 345; [2004] 1 LNS 461).

**[29]** Hence, on this issue, I cannot accept learned counsel for the first respondent's argument that there was non-compliance with r 9 of the EPR.

**[30]** So much about the technical issues pertaining to rr 15 and 9 of the EPR.

*Non-compliance of r 4(1)(b) and 4(4)(3) of the EPR*

**[31]** That leaves me to deal with the question of non-compliance of r 4(1)(b) and 4(4)(3) of the EPR. This is an important and crucial question into which I must look more closely. With regard to this issue, in essence, it is the contention of learned counsel for the first respondent and learned senior federal counsel ('SFC') that the petition does not contain the material facts as required by r 4(1)(b) and 4(4)(3) in that the petitioner has failed to name the persons to whom the alleged corrupt acts were made or addressed. On this ground alone, they argued that the election petition should be struck out.

**[32]** In *Mohd Nazri bin Hj Din v Dato' Seri Raja Ahmad Zainuddin bin Raja Hj Omar & Ors* [2009] 3 MLJ 589; [2009] 3 CLJ 221, the Federal Court held:

> It is therefore abundantly clear that the facts to be pleaded pursuant to r 4(1)(b) and r 4(4)(3) must be such as to make out a case for the petitioner. In other words all the material facts must be pleaded though a concise statement of them will suffice.
>
> *Failure to comply with this mandatory requirement will render the petition defective*. (Emphasis added.)

**[33]** It is at this stage that I pause here for a moment to underline the significance of the mandatory requirement. It may seem at first sight a hard result for any petitioner in any election petition. Why is this? The first thing that one should know and clearly understand is that the jurisdiction of the election judge to hear election petition is a creature of statute and the judge is especially bound strictly within the letters of the election laws (see *Mahari bin Endut v Dato' Hj Mat Razali bin Kassim & Ors* [2009] 5 MLJ 153). In the same vein, just as the Election Court is bound by the election laws, so too the petitioner in any election petition must strictly adhere to and obey all the requirements of the election laws. And in this regard, even in the area of public law litigation, the audi alteram partem rule, or the rule requiring fair hearing is of central importance. A basic norm of natural justice is that before initiating adjudicatory proceedings, the party concerned should be given notice of the case against him so as to enable him to adequately defend himself. The right to

a hearing becomes illusory if the party has no sufficient and full knowledge of the precise allegations which he has to meet. Notice is thus regarded as the sine qua non of the right of hearing (see *Administrative Law of Malaysia and Singapore* (3rd Ed) by Professor MP Jain at p 291). Over and above this, there is a greater reason for taking the same view in regard to matters pertaining to the allegations of corrupt practice in an election petition.

**[34]** Such serious allegations are in the nature of quasi-criminal charges and must be proved beyond reasonable doubt and not on preponderance of probabilities (see *Kho Whai Phiaw v Chong Chieng Jen* [2009] 4 MLJ 776; [2009] 3 CLJ 201). It is for these reasons that the Election Court insists upon a strict compliance of the election laws in order for the respondent to know the nature of the allegations so as to enable him to prepare his case. In this way, he might marshal his facts and preserve his evidence in anticipation of a judicial hearing (see *Wan Daud bin Wan Jusoh v Mohamed bin Haji Ali & Anor* [1988] 2 MLJ 384).

**[35]** Coming now to the present election petition, at this juncture, it is important to emphasise that the first ground is based on the allegation of corrupt practice committed by the first respondent and/or the agent pursuant to s 32(c) of the Act. Section 32(c) states the election of a candidate at any election shall be declared to be void on an election petition on the ground that a corrupt practice or illegal practice was committed in connection with the election by the candidate or with his knowledge or consent, or by any agent of the candidate.

**[36]** In so far as it is relevant to the present petition, if one turns from the authorities and looks at the matter as a question of principle, I think the following principle of law was well settled by the decision of the Federal Court in *Mohd Nazri bin Hj Din v Dato' Seri Raja Ahmad Zainuddin bin Raja Hj Omar & Ors*: in order to sustain an election petition under s 32(a) and (c) of the Act, the material facts to be pleaded as required by r 4 of the EPR would be the elements that constitute the offence of bribery in question. Undoubtedly, the judgment of the Federal Court in *Mohd Nazri bin Hj Din v Dato' Seri Raja Ahmad Zainuddin bin Raja Hj Omar & Ors* represents the law on this subject as we apply today. There is no other case that is clearer than this on this point. By parity of reasoning, it cannot be emphasised enough that this requirement is a condition precedent and mandatory to abide by. It is with this principle in mind that I now turn to consider whether the mandatory requirements of r 4 of the EPR have been complied with by the petitioner.

**[37]** First, it is very important to take a closer look at the provisions under current discussion, which are s 10(a), (c) and (e) of the Act.

**[38]** A plain reading of these three provisions would reveal that the gravamen of the offence of bribery within the meaning of the above penal provisions is inducing or influencing any person, by wrong means, to do or not to do a thing which he may otherwise have not done or done. In the context of the present petition, broadly speaking, the first respondent and/or his agent is alleged to have induced or influenced persons with a view to change their votes or influence the result of the by-election. It has to be said at this point that in order to constitute the offence of bribery within the meaning of s 10(a), (c) and (e) of the Act, a close and direct nexus must be proved between the bribery act and the person to whom it was made or addressed to do or not to do a thing which he otherwise have not done or done. These two things are linked up. Construed in this way and by reference to the facts and circumstances of the present case, I think the first respondent is entitled to know with clearness and certainty at the very earliest stage the name and identity of the persons to whom the alleged act was made or addressed (see *Mohd Nazri bin Hj Din v Dato' Seri Raja Ahmad Zainuddin bin Raja Hj Omar & Ors* and *Re Pengkalan Kota Bye-Election Teoh Teik Huat v Lim Kean Siew & Anor* [1981] 1 MLJ 265; [1981] 1 LNS 1).

**[39]** The following question then arises: how is this mandatory requirement pleaded in the election petition at hand? Mr Malik Imtiaz, learned counsel for the petitioner argued to the effect that the details to the specific allegations of corrupt practice allegedly committed by the first respondent and/or his agent contained in the election petition have fully complied with the requirements of r 4(1)(b) and 4(4)(3) of the EPR. He argued that the petitioner has in the petition stated the locations, the venues and the speeches for the court to take into consideration. It is his contention that in election petition there was no necessity to reproduce the entire speeches in the petition itself. He argued that the particulars alluded in the petition are more than sufficient for the first respondent to meet his case at trial. Learned counsel then brought to my attention the judgment of the Supreme Court of India in the case of *KK Ramachandran Master v MV Sreyamakumar & Ors* [2010] STPL (Web) 444 SC to support his contention that the averments in the election petition has set out the material facts and give sufficient particulars that would justify the grant of an opportunity to the petitioner to prove his allegations at trial against the first respondent and/or his agent. To end his submission, Mr Malik Imtiaz said that the petition filed by the petitioner may not be a perfect petition but it is enough to give reason for this court to order for a trial.

**[40]** I have read thoroughly and gave my utmost consideration of the judgment of the Supreme Court of India in the case of *KK Ramachandran Master v MV Sreyamakumar & Ors* to point the difference of that case from the present case. I respectfully decline to follow the Supreme Court of India's case

in light of our own EPR. But most important of all, I am bound to follow our Federal Court case in *Mohd Nazri bin Hj Din v Dato' Seri Raja Ahmad Zainuddin bin Raja Hj Omar & Ors*.

**[41]** Coming back, then, to the present case, in vain, have I searched through the election petition and, particularly through paras 20–69 thereof, for any specific name of or identity of the persons to whom the alleged bribery act of the petitioner was made or addressed. The point to make here is this. It is true that the election petition contains various facts in relation to the alleged corrupt practices. Tellingly, however, on the basic and critical issue, the election petition is singularly silent of any specific name. It follows that, there is a glaring omission to mention the names of the persons said to have been so induced or influenced by the alleged act of the first respondent or his agent. What stands out also is that not one of the recipients of any such alleged bribe has been named in the petition. That is why, in this regard, I find the arguments of Mr Firoz Hussein and learned SFC argument very persuasive and the cases cited by them have given much assistance to this court in dealing directly with the issue. I need not go through all the cases here. But, I would say further that the identity of these persons in the election petition is ambiguous because it is stated generally to have been, *parliamentary electors*. This can imply or signify that the petitioner himself did not know at the time of filing this election petition the identity of the persons. As I see it, this kind of statement is quite vague and devoid of material facts, hence, it will render the petition defective. But I also need to consider one further argument. In this regard, Mr Azhar Azizan Harun argued, as I understand him, that the identity of the persons to whom the corrupt act was made or addressed is a matter of evidence which need not be pleaded. He then brought to my attention r 5 of the EPR which says that evidence need not be stated in the petition, but the judge may, upon application in writing by a respondent, order such particulars as may be necessary to prevent surprise and unnecessary expense, and to ensure a fair and effectual trial upon such terms as to costs and otherwise as may be ordered. In countering this argument, Mr Firoz Hussein pointed out, I think, quite rightly that r 5 becomes relevant only when the petitioner has fully complied with r 4(1)(b) and 4(4) of the EPR. I think there is substance in this argument. Indeed, to my mind, if an election petitioner failed to meet the mandatory requirements of r 4 of the EPR, it will be unfair and unreasonable if the onus is shifted on the respondent to make the application for such particulars. In my view, the name of the person to whom it was made or addressed is a material fact which must be pleaded under r 4(1)(b) and 4(4) of the EPR. It is not a matter of evidence. The first respondent must be informed of the precise identity of these persons before he can apply in writing for such particulars to this Election Court. This is how r 5 operates. For this reason, I find myself quite unable to agree with the submission of Mr Azhar Azizan Harun to the effect that r 5 of the EPR can save the petitioner's petition. It is an established principle of law that no evidence can be led on a plea not raised in pleadings

and that no amount of evidence can cure a defect in the pleadings (see *Azhar Hussain v Rajiv Gandhi* AIR 1986 SC 1253).

**[42]** All that said, in my view, the fundamental flaw in the petition is a matter of substance and not merely form. This is not a mere technical non-compliance. The election petition in its present form is lacking in the most vital and material essential fact to furnish a cause of action. The result is that the petitioner has failed to plead the essential element that constitute the offences of bribery within the meaning of s 10(a), (c) and (e) of the Act. Consequently, I hold that the petitioner has not complied with the requirements of r 4(1)(b) and r 4(4)(3) of the Act as the facts pleaded are insufficient to sustain the prayer. It renders the petition defective and invalid.

**[43]** But even having said this fatal flaw, the petitioner has also failed to provide the precise accusation of the bribery act committed by the first respondent and/or his agent. Take now the very first charge in the petition as an example. By virtue of s 10(a), the following are the separate and distinct bribery acts contemplated by the Legislature: (a) Gives, lend, agrees to lend; (b) Offers, promises; (c) Promise to procure; and (d) Endeavour to procure. Those provisions seek to deal with an extensive and a range of types of corrupt acts. Now, the election petition constitutes the charges levelled by the petitioner at the first respondent and/or his agent. If the charges are framed in such a manner that the specific and necessary ingredient of the offence is not clearly brought out in the charges, this becomes vague and defective. This is not to say that petitioner is required to file a perfect election petition. The charge must be a document setting out the specific accusation made against a person who is entitled to know its nature at the very early stage (see Justice Dr Hamid Sultan bin Abu Backer in his book *Janab's Key to Criminal Procedure Evidence Advocacy and Professional Ethics* (1st Ed) 2001 at p 75). In *Keshav Prasad v AD Mani* [1961] DEC 133 (MPHC), the High Court of Madhya Pradesh cited the case of *Bhikaji Keshao Joshi & Anor v Brijlal Nandlal Biyani & Ors* AIR 1955 SC 610, where the Supreme Court of India observed that the requirement of full particulars is one that has got to be complied with sufficient fullness and clarification so as to enable the opposite party fairly to meet them and they must be such as not to turn the enquiry before the tribunal into a rambling and roving inquisition. It all comes back to this. Since the pleadings in relation to s 32(c) of the Act concerns 'corrupt practice' the requirements of pleadings are strict (see *Wan Sagar bin Wan Embong v Harun bin Taib* [2008] 6 MLJ 473; [2009] 1 CLJ 457 and *Dr Shafie bin Abu Bakar v Pegawai Pengurus Pilihan Raya N 26 Bangi — Mohd Zakri bin Hj Hussin & Ors and other petitions (No 2)* [2005] 2 MLJ 149; [2005] 5 CLJ 349).

**[44]** It is now appropriate to consider whether the above requirements have been complied with by the petitioner in respect of the first charge. It is apparent that in stating the corrupt conduct of the first respondent, the petitioner merely quotes the words of the section, without clearly identifying the precise corrupt practice levelled at the first respondent. When one carefully looks at the election petition, it is clear that the petitioner failed to state his accusation with clarity and precision. Reading the first charge for example, it simply says *agreed to give, offered, promised, promised to procure, endeavored to procure*. What does this mean exactly? Looking at this ingredient of the charge, in many ways one will have to speculate or guess as to what exactly the corrupt act is being alleged against the first respondent and his agent, in doing so, and bearing in mind the separate and distinct corrupt acts contemplated by s 10(a) of the Act, which I have pointed out earlier, the petitioner has failed to clearly identify the corrupt practice levelled at the first respondent. The reason for this insistence is obvious. This point has already been made earlier in the judgment but deserved to be reiterated here. The first respondent has the right to know at the earliest possible moment the exact charge which he is called upon to meet. In this way, the petitioner is required to state with precision such specific act which can be attributed to the first respondent to indicate his culpability. I should perhaps note that the manner the charge is crafted in the petition is akin to casting the net wide in the hope it might strike with either one. The rule does not allow this.

**[45]** And as if that is not flawed enough, there would be great difficulty in determining and defining what is the corrupt act said to have been committed by the first respondent and/or his agent when one remembers that the full text of what the first respondent's agent has said has not been set out (see *Mohd Nazri bin Hj Din v Dato' Seri Raja Ahmad Zainuddin bin Raja Hj Omar & Ors*). There is merit in the argument of Mr Firoz Hussein that the part left out could well have neutralised the part that has been pleaded.

**[46]** Bearing in mind that a close and direct nexus must be proved between the alleged bribery acts of the first respondent and/or his agent, and the persons to whom they were made or addressed to, it will be immediately noticed that all the other charges also suffer from similar kind of shortcomings. In this sense, the petition cannot be sustained in law as it lacks clarity and precision. The petitioner failed to plead the essential element that constitute the offences of bribery within the meaning of s 10(a), (c) and (e) of the Act. Consequently, I hold that the petitioner has not complied with the requirements of r 4(1)(b) and (4)(3) as the facts pleaded are insufficient to sustain the prayer. This in turn, renders the petition defective and invalid.

**[47]** So far I have dealt with the issues pertaining to r 4 of the EPR in relation to the ground of the offence of bribery pursuant to s 32(c) of the Act.

**[48]** From this point on, I shall deal with the ground of general bribery by the first respondent or his agent pursuant to s 32(a) of the Act. Here, it is the contention of all the three respondents that the petitioner has also failed to comply with r 4(1) and 4(4)(3) of the EPR in that he failed to plead how the purported 'general bribery' (which is denied in toto by the respondents) has so extensively prevailed that it is reasonably supposed to have affected the result of the by-election.

**[49]** First and foremost, what is important to notice, however, is that the petitioner has relied entirely on his pleading of s 32(c) to sustain his allegation of s 32(a). I have already expressed my view that in relation to the ground of corrupt practice by the first respondent or his agent pursuant to s 32(c) of the Act, the petitioner has failed to plead the essential element that constitute the offences of bribery within the meaning of s 10(a), (c) and (e) of the Act and I have said that the petitioner has not complied with the requirements of r 4(1) (b) and (4)(3) of the Act as the facts pleaded are insufficient to sustain the prayer. Consequently, since the petitioner has also relied entirely on his pleading of s 32(c), the ground under s 32(a) is therefore wholly untenable.

**[50]** Be that as it may, the statement of the poll after the addition of votes published in the *Gazette* PU (B) 237 dated 6 May 2010 shows that 24,997 votes were cast in favour of the first respondent and 23,272 votes were cast in favour of the petitioner; total number of electorate 64,500 and percentage of voting was 76%. Assuming general bribery has so extensively prevailed in the by-election, bearing in mind that the first respondent was returned and declared the winner with a significant majority of 1,725 votes, in my view, the petitioner has failed to state the facts and particulars to show in the election petition itself how the alleged general bribery has so extensively prevailed that it is reasonably supposed to have affected the result of the by-election (see *Gan Joon Zin v Fong Kui Lun & Ors* [2004] 4 CLJ 729). There are no particulars to show the number of voters who had voted for the first respondent and not for the petitioner as a result of the alleged general bribery so extensively prevailed in the by-election. In my view, there is merit in the arguments of the learned SFC to the effect that no sufficient particulars have been furnished in the election petition to explain that the alleged extensive prevalence of general bribery is more probable than not have affected the result of the by election. To my mind, there is no fact sufficient to formulate a cause of action to legally sustain the prayers sought. Hence, in my judgment the petitioner has only made general statements and failed to comply with the provisions of s 32(a) of the Act read with r 4(1)(b) and 4(4)(3) of the EPR for the purpose of enabling the petition to go to trial.

CONCLUSION

**[51]** One final point remains. Both Mr Malik Imtiaz and Mr Azhar Azizan

Harun said and said forcibly of how important the election petition should go to trial. In the course of their submissions, they drew attention to this court what were allegedly to have been said and done during the by-election campaign. They urged this court to put to trial all those corrupt practice allegations made by the petitioner in order for this court to protect the purity of elections. Now, I accept the proposition that the result of an election is subject to judicial scrutiny. Indeed, an Election Court has a constitutional responsibility to protect and safeguard the purity of elections. But what should happen when the material facts and particulars of the alleged corrupt practices are not succinctly furnished and the election petition is fundamentally defective? Thus, a line has to be drawn somewhere. Now, I can see no reason whatsoever in principle why an election petition should not go to trial. The only exception in this regard is when the petition is fundamentally defective, in which case the petition should not go to trial. I have already expressed my view that the election petition is fundamentally defective. Is it then in accordance with the concept of procedural fairness for the first respondent to answer defective charges? I think not. I think I should be wrong if I were to hold otherwise. Leaving aside the question that the petitioner is required to plead such material particulars in the election petition pursuant to the EPR, as discussed earlier, I take the view that it is a basic principle of natural justice that the first respondent should be given a complete notice of the case against him to adequately defend himself and to have a fair opportunity of answering the same. With all respect to Mr Malik Imtiaz and Mr Azhar Azizan Harun, their arguments do not overcome, to my mind, this point of profound difficulty in the face of the defective petition; the fundamental defect being of a fatal nature. I do not think, it is enough to say that as a matter of policy and because this election petition has somewhat generated and attracted a lot of public interest, it should then be put to trial. In the end, applying the election laws as I understand it to be, on the whole, I am not entirely satisfied that this election petition, as it now stands, falls on the side of the line as to justify the charges to be put to trial. Therefore, to sum it up, based on all the previous mentioned reasons, I see no alternative but to find that the grounds raised by of the first respondent's motion (encl 26) and the second and third respondents' preliminary objection relating to r 4(1)(b) and 4(4)(3) of the EPR are sufficient to strike out the petition with costs.

**[52]** In accordance with s 36(1) of the Act, I declare that the first respondent was duly elected as the Member of Parliament for Hulu Selangor Parliamentary Constituency of P94, and shall certify this decision to the Election Commission in due course.

*Petition struck out with costs.*

Reported by Andrew Christopher Simon